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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,463	10/27/2003	Rosemarie P. Denicola	PA-0019-L	2514
44323	7590	06/13/2006	EXAMINER	
STEVEN B. STEIN 114 OLD BLOOMFIELD AVENUE PARSIPPANY, NJ 07054			NGUYEN, TRINH T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings are objected to because there is no brief description of Figure 3C in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the

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examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Henry (US 5241784).

For claims 1, 9 and 10, Henry discloses a protection device comprising: a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation (see Figure 6 especially) and the apertures are capable of preventing passage of vermin and permitting passage of water.

For claim 6, Henry further disclose a plurality rows of apertures extending generally from the top end to the bottom end.

For claim 7, Henry further disclose a plurality of diagonally shaped apertures.

For claim 8, Henry further disclose alternating rows of diagonally shaped apertures wherein the diagonal shape is generally oriented from the top end to the bottom end in a left to right direction in a first row and wherein the diagonal shape is generally oriented from the top end to the bottom end in a right to left direction in a second row.

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5. Claims 1,2,4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Takita (US 5564223).

For claim 1, Takita discloses a protection device comprising: a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation (see Figure 1A especially).

For claims 2, 4, and 5, Takita further discloses a closure means wherein the closure means is a tie (10).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henry (US 5241784) in view of Beers (US 1464801).

As described above, Henry discloses most of the claimed invention except for an anchor means.

Beers teaches a concept of using post member (3) as an anchor means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Henry so as to include the use of an anchor means, in a similar manner as taught in Beers, since to do so would allow the user to

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anchor the device in a more stable position and/or location and thus prevent the device from tipping over.

8. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry (US 5241784) in view of Anderson (US 4628634).

As described above, Henry further discloses the steps of inserting of a plant into the device and inserting of soil into the device. However, Henry lacks the step of inserting the device into the ground.

Anderson teaches a similar device as that of Henry in which Anderson discloses a step of inserting the device into the ground (see Figure 3 especially). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Henry so as to include the step of inserting the device into the ground, in a similar manner as taught in Anderson, since inserting the device into the ground would allow the user to replant the device more easily and efficiently.

Response to Arguments

9. Applicant's arguments with respect to claims 1-10,13, and 14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M). The examiner's supervisor, Teri Luu can be reached on (571) 272-7045 for the purpose of status inquiry only. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Trinh T. Nguyen', with a long horizontal flourish extending to the right.

Trinh T. Nguyen
Primary Examiner
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6/7/06